

**SUBJECT:** Revising Penal Code, probation, parole

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 9 ayes — Place, Hartnett, Allen, Combs, De La Garza, Granoff, Greenberg, Nieto, Talton

0 nays

2 absent — Solis, Stiles

**SENATE VOTE:** On final passage, April 22 — voice vote

**WITNESSES:** No public hearing

**BACKGROUND:** The 72nd Legislature enacted HB 93 by Hightower and Stiles, which provides that, unless reenacted, the Penal Code, except for the sections on capital felonies, murder and capital murder, will be repealed September 1, 1994.

CSSB 1067 and CSSB 532, also on today's calendar, form a package to restructure the criminal justice and corrections system in Texas. CSSB 1067 deals with defining criminal offenses and setting punishment standards; CSSB 532 deals with correctional facilities and programs for meting out punishment. CSSB 1067 would incorporate into the Texas criminal justice system a new category of felony offense: the state jail felony. CSSB 532 would authorize a system of state jails to accommodate these felony offenders. Each bill is contingent on enactment of the other.

**DIGEST:** CSSB 1067 would substantially amend the Penal Code, establishing a new felony category, reclassifying offenses based on their nature and severity, reconfiguring the probation system and revamping eligibility for parole. The bill also would enact new provisions dealing with certain rights of individuals within the criminal justice system. CSSB 1067 would consolidate certain provisions within the code, eliminating duplicative sections and make conforming and/or attendant changes to the Controlled Substances Act and the Code of Criminal Procedure.

**Offenses and punishments.** CSSB 1067 would reconfigure the severity of offenses, based on such factors as intent of the actor, the interests of the state, whether the crime involved a victim, and the value of property taken or damaged.

For property crimes, the bill would generally create "value ladders," increasing the severity of the offense with the value of the property. **Table A** lists specific property offenses.

CSSB 1067 also would enact a new "person offense ranking" to be used for determining whether a defendant could be considered for certain proceedings that defer prosecution without an adjudication of guilt (deferred adjudication). Capital murder would be the only offense within its category. **Table B** lists the felony rankings for other person offenses.

The bill also would reconfigure punishments for offenses involving illegal or controlled substances under the Health and Safety Code. **Table C** compares proposed to current penalties.

CSSB 1067 would streamline the Penal Code, merging like offenses and eliminating some offenses. **Table D** lists sections of the code that would be deleted.

The bill would increase the punishment for Class A and Class B misdemeanors, increasing the fine for a Class A from \$3,000 to \$4,000 and a Class B from \$1,500 to \$2,000. For third degree felonies, the bill would eliminate the possibility of one year's confinement to a community correction facility. It also would establish a new felony category, the state jail felony.

State jail felonies could be punished by confinement in a state jail facility and a fine of up to \$10,000. Under amendments to the Code of Criminal Procedure, judges would immediately suspend the confinement sentence upon conviction for a state jail felony and place the defendant under community supervision for two to five years. During this time, the defendant could be required to submit to periods of confinement in a state jail. First time offenders could be confined up to 12 months total during the period of community supervision. Confinement time could be increased

up to 18 months for an offender with a previous felony conviction, and up to 24 months for an offender previously convicted of two or more felonies.

The punishment for a state jail felony offense would be enhanced to that of a third degree felony if a deadly weapon was involved during the commission of or flight from the offense or if the individual previously had been convicted of or placed on probation for an offense involving a deadly weapon. Under certain circumstances, punishment for a state jail felony could be enhanced to that of a second degree felony.

Judges also would be allowed to punish a state jail felony by imposing the confinement permitted for a Class B misdemeanor (180 days in jail) and/or a fine of up to \$10,000.

**Community supervision.** CSSB 1067 would amend the Code of Criminal Procedure to replace the concepts of probation and deferred adjudication with a single program of community supervision. The term would apply to the court's placement of a defendant under a continuum of programs and sanctions for a specified period during which (1) criminal proceedings would be deferred without an adjudication of guilt or (2) the sentence would be suspended in whole or in part.

The bill would allow community supervision in both judge and jury trials for eligible defendants. Community supervision would not be available for defendants who were convicted of or who entered a plea of guilty or no contest to capital murder or defendants previously convicted of certain felonies.

Deferred adjudication could not be granted to a defendant in a misdemeanor case who had previously received deferred adjudication for a misdemeanor or to a defendant who had previously received it for a felony. Defendants charged with certain intoxication offenses or a person offense punishable as a second degree felony or higher also would be ineligible for deferred adjudication.

For felony cases, the minimum period of community supervision would be two years, the maximum five. For misdemeanors, the maximum would be two years.

CSSB 1067 would expand the list of basic conditions for community supervision that a court could impose. Additional requirements could include: submitting to electronic monitoring; making payments to the crime victims compensation fund; reimbursing law enforcement agencies for drug analyses and equipment storage; paying costs for a victim's psychological counseling; or making payment to a local crime stoppers program.

When conditions warranted, judges also could require that a defendant submit to mental health or substance abuse treatment or to perform certain types of community service.

State jail felons beginning a term of community supervision could be required to submit to confinement in a state jail for 60 to 120 days. Throughout the course of the community supervision, judges could order confinement as necessary. When a defendant was ordered confined to a facility, the director would have to report at least every 90 days to the judge on the defendant's programmatic progress and conduct. State jail felons could not earn good conduct time while confined to a facility.

**Eligibility for parole.** CSSB 1067 would amend the Code of Criminal Procedure to increase the amount of time a prisoner would have to serve before becoming eligible for parole. Prisoners serving life sentences for capital felonies would have to serve 40 years of actual calendar time, instead of the 35 years currently required.

Prisoners serving sentences for certain first degree felonies would not be eligible until actual calendar time equaled one half of the maximum sentence or 30 years, whichever was less, instead of the current one quarter of the maximum sentence or 15 years. Felonies falling under this standard would include murder, aggravated kidnapping, indecency with a child (sexual contact), aggravated sexual assault and aggravated robbery. The standard also would apply to felons whose judgments contained an affirmative finding that a deadly weapon was used or exhibited during the commission of the offense or in flight following the offense.

**Defendants' rights.** CSSB 1067 would prohibit using for penalty enhancement purposes information on a felony conviction for an offense committed more than 10 years prior to the one at issue.

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The bill would establish a means by which individuals convicted of a federal offense other than one involving violence or the threat of violence or drugs or firearms could apply for restoration of civil rights forfeited under state law as a result of the conviction.

It also would allow for expunging all records and files relating to an arrest for an offense of which the individual is subsequently acquitted.

**Contingent effect.** CSSB 1067 would take effect only if SB 532 (also on today's calendar) also is enacted.

**TABLE A**  
**TITLE 7: OFFENSES AGAINST PROPERTY**

	Class C Misdemeanor	Class B Misdemeanor	Class A Misdemeanor	State Jail Felony	3rd Degree Felony	2nd Degree Felony	1st Degree Felony
Criminal Mischief	<\$20 or Substantial Inconvenience	\$50 - \$499	\$500 - \$1,499 or <\$1,500 and public facility/service impaired	\$1,500 - \$19,999 or damage of cemetary or public monument <\$20,000	\$20,000 - \$99,999	\$100,000 - \$199,999	>\$200,000
Reckless Damage or Destruction	Any offense						
Robbery					Most offenses	Against elderly or disabled	
Aggravated Robbery							Any offense
Burglary				In building other than habitation	In habitation	Habitation occupied or offender armed	Injury or attempted injury
Burglary of Coin- Operated Machines			Any offense				

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	Class C Misdemeanor	Class B Misdemeanor	Class A Misdemeanor	State Jail Felony	3rd Degree Felony	2nd Degree Felony	1st Degree Felony
Burglary of Vehicles			Any offense				
Criminal Trespass	Any offense except if in habitation or shelter center						
Theft	<\$20	\$20 - \$499	\$500 - \$1,499	\$1,500 - \$19,999 or stolen from person or corpse or <\$1,500 and previous theft conviction	\$20,000 - \$99,999	\$100,000 - \$199,999	>\$200,000
Theft of Service	<\$20	\$20 - \$499	\$500 - \$1,499	\$1,500 - \$19,999	\$20,000 - \$99,999	\$100,000 - \$199,999	>\$200,000
Theft of Trade Secrets					Any offense		
Unauthorize Use of a Vehicle				Any offense			

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	Class C Misdemeanor	Class B Misdemeanor	Class A Misdemeanor	State Jail Felony	3rd Degree Felony	2nd Degree Felony	1st Degree Felony
Tampering with ID Numbers			Any offense				
Forgery			Most offenses	Forged legal document	Forged currency, postage, stock or government record		
Criminal Simulation			Any offense				
Credit Card or Debit Card Abuse				Any offense			
Hindering Secured Creditors	<\$50	\$50 - \$499	\$500 - \$1,499	\$1,500 - \$19,999	\$20,000 - \$99,999	\$100,000 - \$199,999	>\$200,000
Fraudulent Transfer of Motor Vehicle			Transfer without disclosure of location	<\$20,000	>\$20,000		



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	Class C Misdemeanor	Class B Misdemeanor	Class A Misdemeanor	State Jail Felony	3rd Degree Felony	2nd Degree Felony	1st Degree Felony
Misapplication of Fiduciary Property	<\$50	\$50 - \$499	\$500 - \$1,499	\$1,500 - \$19,999	\$20,000 - \$99,999	\$100,000 - \$199,999	>\$200,000
Execution of Document by Deception	<\$50	\$50 - \$499	\$500 - \$1,499	\$1,500 - \$19,999	\$20,000 - \$99,999	\$100,000 - \$199,999	>\$200,000
Fraudulent Destruction, Removal, or Concealment of Writing			Most offenses	Writing was legal document			
Chain Scheme		Any offense					
Breach of Computer Security			Most offenses	If intended to benefit, defraud or harm and <\$20,000	If intended to benefit, defraud or harm and >\$20,000		

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	Class C Misdemeanor	Class B Misdemeanor	Class A Misdemeanor	State Jail Felony	3rd Degree Felony	2nd Degree Felony	1st Degree Felony
Credit Card Transaction Record Laundering	<\$50	\$50 - \$499	\$500 - \$1,499	\$1,500 - \$19,999	\$20,000 - \$99,999	\$100,000 - \$199,999	>\$200,000
Issuance of Bad Check	Any offense						
Deceptive Business Practices	Certain offenses committed with criminal negligence; no previous convictions		Same offenses committed knowingly or recklessly and with previous Class B or C conviction or certain other offenses involving misrepresentation				
Commercial Bribery				Any offense			
Rigging Public Contest			Any Offense				
Illegal Athletic Recruitment	<\$50	\$50 - \$499	\$500 - \$1,499	\$1,500 - \$19,999	\$20,000 - \$99,999	\$100,000 - \$199,999	>\$200,000

**TABLE B**  
**PERSON OFFENSE RANKINGS**

**First Degree Felony Offenses**

- First degree murder
- Aggravated sexual assault
- Injury to a child (intentional with serious bodily injury)
- First degree aggravated kidnapping
- Aggravated assault (with serious bodily injury to public servant)
- Aggravated robbery (with serious bodily injury or with use of weapon)
- Arson (with bodily injury)
- Burglary (with bodily injury or attempt)

**Second Degree Felony Offenses**

- Second degree murder
- Involuntary manslaughter
- Intoxication manslaughter
- Second degree aggravated kidnapping
- Robbery (bodily injury or threat to elderly or disabled person)
- Burglary (occupant or weapon)
- Tampering with consumer products (with bodily injury)
- Aggravated assault
- Injury to a child (reckless with serious bodily injury)
- Indecency with a child (touching)
- Abandoning child (imminent danger)
- Sexual performance by child
- Sexual assault
- Compelling prostitution

**Third Degree Felony Offenses**

- Kidnapping
- Robbery
- Intoxication assault (driving while intoxicated resulting in serious bodily injury)
- Injury to a child (intentional with bodily injury)
- Abandoning child (without intent to return)
- Prohibited sexual conduct (incest)
- Sale of child
- Indecency with child
- Solicitation of a child
- Burglary (habitation, without aggravating factors)

**State Jail Felony Offenses**

- Negligent homicide
- Injury to a child (reckless with bodily injury or negligent with serious bodily injury)
- Abandoning child
- Aiding suicide
- Interference with possession of or access to child
- Agreement to abduct from custody
- False imprisonment

**TABLE C**

**Penalty Group 1: Opiates, Opium Derivatives, Cocaine**

**Manufacture or Delivery**

**Revised Penalty/Amount**

State jail felony/less than 1 gram

Third degree felony/1-4 grams

Second degree felony/4-200 grams

First degree felony/400 grams or more

**Current Penalty/Amount**

First degree felony/less than 28 grams

Aggravated first degree felony/28 grams  
or more

Life or 5-99 years and a fine of up to  
\$50,000/28-200 grams

Life or 10-99 years and a fine of up to  
\$100,000/200-400 grams

**Possession**

**Revised Penalty/Amount**

State jail felony/less than 1 gram

Third degree felony/1-4 grams

Second degree felony/4 grams or more

**Current Penalty/Amount**

Second degree felony/less than 28  
grams

Aggravated second degree felony/28  
grams or more

Life or 5-99 years and a fine of up to  
\$50,000/28-400 grams

Life or 10-99 years and a fine of up to  
\$100,000/400 grams or more

**Penalty Group 2: Hallucinogenic Substances**

**Manufacture or Delivery**

**Revised Penalty/Amount**

State jail felony/less than 1 gram

Third degree felony/1-4 grams

Second degree felony/4 grams or more

**Current Penalty/Amount**

Second degree felony/less than 28 grams

Aggravated second degree felony/28 grams or more

Life or 5-99 years and a fine of up to \$50,000/28-400 grams

Life or 10-99 years and a fine of up to \$100,000/more than 400 grams

**Possession**

**Revised Penalty/Amount**

State jail felony/less than 1 gram

Third degree felony/1-4 grams

Second degree felony/4 grams or more

**Current Penalty/Amount**

Third degree felony/less than 28 grams

Aggravated third degree felony 28 grams or more

Life or 5-99 years and a fine of up to \$50,000/28-400 grams

Life or 10-99 years and a fine of up to \$100,000/more than 400 grams

**Penalty Group 3: Stimulants**

**Manufacture or Delivery**

**Revised Penalty/Amount**

State jail felony/less than 28 grams

Second degree felony/28 grams or more

**Current Penalty/Amount**

Third degree felony/less than 200 grams

Aggravated third degree felony/200  
grams or more

Life or 5-99 years and a fine of up to  
\$50,000/200-400 grams

Life or 10-99 years and a fine of up to  
\$100,000/more than 400 grams

**Possession**

**Revised Penalty/Amount**

Class A misdemeanor/less than 28 grams

Second degree felony/28 grams or more

**Current Penalty/Amount**

Class A misdemeanor/less than 200  
grams

Life or 5-99 years and a fine of up to  
\$50,000/200-400 grams

Life or 10-99 years and a fine of up to  
\$100,000/more than 400 grams

**Penalty Group 4: Narcotics**

**Manufacture or Delivery**

**Revised Penalty/Amount**

State jail felony/less than 28 grams

Second degree felony/28 grams or more

**Current Penalty/Amount**

Third degree felony/less than 200 grams

Aggravated third degree felony/200  
grams or more

Life or 5-99 years and a fine of up to  
\$50,000/200-400 grams

Life or 10-99 years and a fine of up to  
\$100,000/more than 400 grams

**Possession**

**Revised Penalty/Amount**

Class B misdemeanor/less than 28 grams

Second degree felony/28 grams or more

**Current penalty/Amount**

Class B misdemeanor/less than 200  
grams

Life or 5-99 years and a fine of up to  
\$50,000/200-400 grams

Life or 10-99 years and a fine of up to  
\$100,000/more than 400 grams

**Marijuana**

**Delivery**

<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
Class B misdemeanor/less than 1/4 oz.; no payment	Same
Class A misdemeanor/less than 1/4 oz.; payment	Same
State jail felony/1/4 ounce-5 pounds	Third degree felony/1/4 ounce-4 ounces
Third degree felony/5-50 pounds	Second degree felony 4 ounces-5 pounds
Second degree felony/50-2,000 pounds	First degree felony/5-50 pounds
First degree felony/more than 2,000 pounds	Life or 5-99 years and a fine of up to \$50,000/50-200 pounds
	Life or 10-99 years and fine of up to \$100,000/200-2,000 pounds
	Life or 15-99 years and a fine of up to \$250,000/more than 2,000 pounds

**Possession**

<b>Revised Penalty/Amount</b>	<b>Current Penalty/Amount</b>
Class B misdemeanor/up to 2 oz.	Same
Class A misdemeanor/2-4 oz.	Same
State jail felony/4 ounces-5 pounds	Third degree felony/4 ounces-5 pounds
Third degree felony/5-50 pounds	Second degree felony/5-50 pounds
Second degree felony/50-2,000 pounds	Aggravated second degree felony/more than 50 pounds



**TABLE D**

**OFFENSE SECTIONS DELETED FROM PENAL CODE**

**Person/Family Offenses**

Intentionally Exposing Another to AIDS or HIV  
Leaving a Child in a Vehicle  
Solicitation of a Child  
Bigamy

**Property Offenses**

Interference with Animals or Animal Facilities  
Unauthorized Use of Television Decoding and Interception Devices or Cable Descrambling,  
Decoding, or Interception Device  
Fraud in Insolvency  
Receiving Deposit, Premium, or Investment in Failing Financial Institution  
Issuance of Checks Printed on Red Paper  
Debit Card Abuse  
Penalty for Fraudulently Obtaining or Denying Workers' Compensation Benefits  
Fraudulent Statement to Financial Institution  
Taxicab Fares  
Penalty for Fraudulently Obtaining Workers' Compensation Insurance Coverage  
Savings and Loan Associations

**Public Administration Offenses**

Compounding  
Failure to Return to Custody Following Work Release  
Preventing Execution of Civil Process  
Tampering with Devices Designed to Prevent Driving while Intoxicated  
Injury To or Interference With Animals Under Supervision of Peace Officer or Department of  
Corrections Employee

**Offenses Against Public Order and Decency**

Possession of Gambling Paraphernalia  
Unlawful Carrying of Weapon at Airport  
Public Intoxication  
Interference with Emergency Communication

**SUPPORTERS  
SAY:**

Texas' overloaded criminal justice system is heading for a complete breakdown. County jails are backlogged with state felons, many guilty of possessing minor amounts of illegal drugs, who waste months in unproductive and nontherapeutic jail routines before finally being paroled without ever having set foot in a state prison. State prisons, meanwhile, are letting violent repeat offenders out on early release to make room for some small-time drug dealer whose 99-year sentence is designed to serve as an example for others.

CSSB 1067, in tandem with CSSB 532, would create a new system for ensuring that violent offenders serve dramatically higher proportions of their prison sentences, that nonviolent offenders are punished more economically and effectively and that jail backlogs are eliminated.

Under this new system, maximum security prison beds would be reserved for violent offenders, who would be required to serve double the amount of time current law allows before they were eligible for parole. Through the community supervision concept, lesser felony offenders would be steered to rehabilitative and therapeutic programs designed to redirect their energies into productive avenues. These "carrots" would be matched with a stick: the state jail felony facilities would be designed to serve a function similar to shock probation. These medium-security facilities would cost much less to build than the state penitentiaries and would be more effectively integrated with available community resources. In many cases, the jail time allowed for state jail felonies would be much more than current law provides for more severe offenses: under CSSB 1067, an individual could spend up to one year in upfront jail time in a state felony jail, compared to the six months in shock probation now given some first degree felons.

State jail felonies would include some offenses against persons, but only those that are reckless or negligent, not premeditated. Individuals who commit these types of crimes can be helped by programs that teach them coping skills to deal with their anger, for example, or counseling and support groups that help them overcome addictions that may have fueled their rage. In sentencing a state jail felon, a judge could order significant amounts of upfront jail time. This would allow maximum security beds to be reserved for cold-blooded sociopaths who are likely to strike repeatedly.

The offense ranking that would reconfigure felony offenses is the product of 18 months of hard work by members of the Punishment Standards Commission. Representatives from all interested parties — prosecutors, defense attorneys, victims, the courts, law enforcement authorities, social service organizations, private citizens and state policy makers — together ordered crimes according to their relative severity. Rankings were guided by a sense of priority that gave greatest concern to crimes of personal harm, including sexual or emotional harm, then to property loss, damage to public trust or authority and damage to decency or morals. CSSB 1067 incorporates these recommendations, ensuring that Texas locks up the longest those offenders who engender fear, not merely anger.

CSSB 1067 also would streamline the Penal Code to make it more effective. In the 20 years since the code was last revised, piecemeal and sometimes unnecessary additions have joined to create a complex labyrinth of specific enhancements and special-interest provisions that are hindering the effective carriage of justice. CSSB 1067 goes back to the code of 1973, removing enhancements that do not fit the general punishment scheme, reconciling individual penalties with the overall scheme, addressing statutory changes necessitated or suggested by appellate court decisions and establishing a standard value ladder for property offenses.

Nothing in CSSB 1067 would legalize anything that previously was illegal; most of what the bill would eliminate already is addressed more effectively and with greater force of law by other statutes. Texas does not need a separate statute for solicitation of a child, for example; the offense is covered within kidnapping or aggravated kidnapping.

**OPPONENTS  
SAY:**

CSSB 1067 would go too far in easing penalties for certain crimes. The bill would downgrade burglary of a vehicle from a third degree felony to a Class A misdemeanor, robbery from a second degree to a third degree felony, and burglary of a habitation from a first degree to a third degree felony. Furthermore, it would make injury to a child or negligent homicide state jail felonies, eligible for community supervision. These are serious offenses that should entail some considerable time behind bars.

Community supervision also would blur the distinction between deferred adjudication and probation. The current system is complicated, but at least

the players know it and how it works. CSSB 1067 would trade that in for a system equally as complicated that could produce many legal challenges, at great cost in time and expense to the state.

OTHER  
OPPONENTS  
SAY:

CSSB 1067's attempted clean sweep of the Penal Code has had uneven results. Some areas have been scrubbed too assiduously while others still show years of accumulated grime.

CSSB 1067 would merge involuntary manslaughter and voluntary manslaughter into the single offense of manslaughter. The bill would allow evidence of sudden passion to be considered as a mitigating factor during the punishment phase. This move would create serious constitutional questions involving a defendant's Fifth Amendment rights not to take the stand, and would probably not pass court challenge.

The same argument also would hold for the offense of aggravated kidnapping. No longer would the offense automatically be downgraded to a second degree felony if the actor voluntarily released the victim alive and in a safe place. Here again, the defendant could only introduce evidence of this in the punishment phase, seriously compromising constitutional rights.

Also troubling are the bill's revisions that would allow testimony about extraneous crimes or bad habits to be introduced during punishment phases. This provision would allow any evidence of acts that could be "shown by clear and convincing evidence to have been committed by the defendant." This low evidentiary level would allow prosecutors to bring in incidents on which charges may never have been filed.

The bill's revisions to the offense of indecency with a child by contact also are problematical. The bill would allow only two years difference in age between the parties for an affirmative defense of consensual sex. In practice this means that an 18-year-old could be charged with a second degree felony for engaging in sexual foreplay with a consenting 15-year-old. Even worse, under the proposed amendments to parole procedures, this offense would make the actor ineligible for parole for 10 years.

CSSB 1067 leaves untouched the sodomy statute, an archaic remnant of legislated mortality that more than one state court has refused to condone.

Prosecutors won't touch this statute, and it's time Texas took it off the books.

Finally, even with the committee substitute extraneous baggage is being reattached to the Penal Code, and piecemeal additions threaten to burden what was to be a sleek and efficient model for criminal justice.

NOTES:

The committee substitute for SB 1067 would restore several offenses eliminated by the Senate, chiefly homosexual conduct, interference with railroad property, interference with child custody, and agreement to abduct from custody. The substitute also would add some new offenses, including discharging a firearm from a vehicle. The substitute would include murder of a child under age six in the capital murder statute, insert the provision allowing for evidence of extraneous bad habits, and establish as an affirmative defense to injury to a child by omission the fact that the accused was a victim of family violence.

Rep. Place plans to offer a floor amendment to retain current procedures for probation and deferred adjudication.

## **CONFERENCE COMMITTEE REPORT ON SB 1067 PENAL CODE REVISION — BRIEF SUMMARY**

SB 1067 would substantially amend the Penal Code, establish a new felony category, reclassify offenses based on their nature and severity, reconfigure the probation system and revamp eligibility for parole.

### **Offenses and Punishments**

The conference committee report would reconfigure the severity of offenses based on such factors as intent of the actor, the interests of the state, whether the crime involved a victim and the value of property taken or damaged. For property crimes, the bill would generally create "value ladders," increasing the severity of the offense with the value of the property.

The conference committee report would increase the maximum fine for Class A from \$3,000 to \$4,000 (with a maximum jail term of one year) and a Class B from \$1,500 to \$2,000 (and a maximum jail term of 180 days). The penalty of two to 10 years imprisonment for a third degree felony would be retained, but the possibility of one year's confinement to a community corrections facility would be eliminated.

The conference report would require "3g" offenders to serve a minimum of one-half of their sentences or 30 years. The conference committee report would add second degree murder and indecency with a child to the "3g" list of violent offenses.

Among other portions of the House version eliminated from the conference committee report were provisions relating to hate crimes, operating a vehicle with an open container of alcohol, the unlawful carrying of weapons and drug-free zones.

### **Capital offenses.**

The conference committee report would add to current capital felonies punishable by death or life imprisonment, including no less than 40 calendar years (increased from 35 years) imprisonment by including:

- murder committed in the course of committing obstruction or retaliation;
- murder committed while incarcerated and with the intent to establish, maintain or participate in a criminal combination;

- murder committed while incarcerated for murder or capital murder;
- murder committed while serving a life term for aggravated sexual assault, aggravated kidnapping and aggravated robbery; and
- murder of a child under six years old.

(The conference committee omitted a House provision that would have made a capital offense of murdering a peace officer who is wearing a distinctive uniform that identifies him as a peace officer. The conference committee also eliminated a House provision that would have lowered from 17 to 16 the minimum age for execution.)

### **Sexual offenses.**

The conference committee report would continue to make it a Class C misdemeanor to engage in deviate sexual intercourse with another individual of the same sex. (The Senate would have deleted this offense.) The conference committee report eliminated the House provision that would have made it a Class C misdemeanor to engage in a sexual act involving the sex organs of one person and the anus of another.

The conference committee report would raise to three years the age differential for consensual sexual relations for an affirmative defense to indecency with a child or to sexual assault involving a minor. (The House version would have maintained the current age differential of two years.)

### **State jail felonies**

SB 1067 would establish a new felony category, the state jail felony. State jail felonies could be punished by confinement in a state jail facility for a term of not more than *two years or less than 180 days* and a fine of up to \$10,000. (The House version would have required confinement for a state jail felony to be for not more than *one year*.)

Under amendments to the Code of Criminal Procedure, judges would immediately suspend the confinement sentence upon conviction for a state jail felony and place the defendant under community supervision for two to five years. During this time, the defendant could be required to submit to periods of confinement in a state jail. The conference report would add a provision (not found in the House version) allowing judges to extend the period of supervision.

The conference committee would allow "up front" confinement in a state jail for 60 days for first convictions, 180 days for one previous felony conviction; one year for two or more previous felony convictions or drug delivery convictions.

The conference committee report would require persons guilty of a state jail felony to be punished for a third degree felony if they used a deadly weapon when committing the crime, if they had been previously convicted of a "3g" felony.

### **Community Supervision**

The conference committee report would amend the Code of Criminal Procedure to replace the concepts of probation and deferred adjudication with a single program of community supervision. Judges would not be able to order community supervision for persons convicted of "3g" offenses.